

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the amendment of ARM)	NOTICE OF PUBLIC HEARING ON
17.8.604, 17.8.610, 17.8.612, 17.8.613,)	PROPOSED AMENDMENT
17.8.614, and 17.8.615 pertaining to)	
open burning)	(AIR QUALITY)

TO: All Concerned Persons

1. On January 13, 2011, at 2:00 p.m., or upon the conclusion of the public hearing for MAR Notice No. 17-310, the Board of Environmental Review will hold a public hearing in Room 111, Metcalf Building, 1520 East Sixth Avenue, Helena Montana, to consider the proposed amendment of the above-stated rules.

2. The board will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact Elois Johnson, Paralegal, no later than 5:00 p.m., January 3, 2011, to advise us of the nature of the accommodation that you need. Please contact Elois Johnson at Department of Environmental Quality, P.O. Box 200901, Helena, Montana 59620-0901; phone (406) 444-2630; fax (406) 444-4386; or e-mail ejohnson@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

17.8.604 MATERIALS PROHIBITED FROM OPEN BURNING (1) The following material may not be disposed of by open burning:

(a) any waste which is moved from the premises where it was generated, except as provided in ARM 17.8.604(2), 17.8.611, or 17.8.612(4)(a) or (4)(b), ~~or unless approval is granted by the department on a case-by-case basis;~~

(b) through (y) remain the same.

(2) A person may not conduct open burning of any wood waste that is moved from the premises where it was generated, except as provided in ARM 17.8.611 or 17.8.612(4)(a) or (4)(b), or unless the department determines:

(a) the material is wood or wood byproducts that have not been coated, painted, stained, treated, or contaminated by a foreign material; and

(b) alternative methods of disposal are unavailable or infeasible.

(3) A person conducting open burning of wood waste which is moved from the premises where it was generated shall comply with BACT.

(4) A person intending to conduct open burning of wood waste which is moved from the premises where it was generated shall contact the department by calling the number listed in ARM 17.8.601(1) prior to conducting open burning.

(2) (5) Except as provided in ARM 17.8.606, ~~ne~~ a person may not open burn any nonprohibited material without first obtaining an air quality open burning permit from the department.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

17.8.610 MAJOR OPEN BURNING SOURCE RESTRICTIONS

(1) through (1)(d) remain the same.

(2) Proof of publication of public notice, consistent with this rule, must be submitted to the department before an application will be considered complete. An applicant for an air quality major open burning permit shall notify the public of the application for permit by legal publication, at least once, in a newspaper of general circulation in each airshed (as defined by the department) affected by the application. The notice must be published no sooner than ten days prior to submittal of an application and no later than ten days after submittal of an application. The form of the notice must be provided by the department and must include a statement that public comments concerning the application may be submitted to the department ~~concerning the application~~ within 20 days after publication of notice or filing of the application, whichever is later. A single public notice may be published for multiple applicants.

(3) through (5) remain the same.

AUTH: 75-2-111, 75-2-203, MCA
IMP: 75-2-203, 75-2-211, MCA

17.8.612 CONDITIONAL AIR QUALITY OPEN BURNING PERMITS

(1) through (9) remain the same.

(10) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision, ~~and must include a~~ An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final ~~unless~~ until 15 days have elapsed from the date of the decision ~~and there is no request for a hearing under this section.~~ The filing of a request for a hearing ~~postpones~~ does not stay the effective date of the department's decision ~~until the conclusion of the hearing and issuance of a final decision by the board.~~ However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(11) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA,

for undertakings on injunctions.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.613 CHRISTMAS TREE WASTE OPEN BURNING PERMITS

(1) through (7)(b)(iii) remain the same.

(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision, ~~and must include a~~ An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final ~~unless~~ until 15 days have elapsed from the date of the decision ~~and there is no request for a hearing under this section.~~ The filing of a request for a hearing ~~postpones~~ does not stay the effective date of the department's decision ~~until the conclusion of the hearing and issuance of a final decision by the board.~~ However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(9) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.614 COMMERCIAL FILM PRODUCTION OPEN BURNING PERMITS

(1) through (7) remain the same.

(8) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision, ~~and must include a~~ An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final ~~unless~~ until 15 days have elapsed from the date of the decision ~~and there is no request for a hearing under this section.~~ The filing of a

request for a hearing ~~postpones~~ does not stay the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(9) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

17.8.615 FIREFIGHTER TRAINING (1) through (5) remain the same.

(6) When the department approves or denies the application for a permit under this rule, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision, ~~and must include a~~ An affidavit setting forth the grounds for the request must be filed within 30 days after the department renders its decision. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, MCA, apply to a hearing before the board under this rule. The department's decision on the application is not final ~~unless~~ until 15 days have elapsed from the date of the decision ~~and there is no request for a hearing under this section.~~ The filing of a request for a hearing ~~postpones~~ does not stay the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board. However, the board may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

(a) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

(b) continuation of the permit during the appeal would produce great or irreparable injury to the person requesting the stay.

(7) Upon granting a stay, the board may require a written undertaking to be given by the party requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if the board determines that the permit was properly issued. When requiring an undertaking, the board shall use the same procedures and limitations as are provided in 27-19-306(2) through (4), MCA, for undertakings on injunctions.

AUTH: 75-2-111, 75-2-203, MCA

IMP: 75-2-203, 75-2-211, MCA

REASON: Sometimes burning wood waste on the premises where it is generated can produce unacceptable amounts of smoke that cause or contribute to a violation of the National Ambient Air Quality Standards. This sort of impact can be avoided, for example, by removing tree debris following a severe wind storm in a city or moving piles of wood waste from the center of a town to a more remote location before burning. However, the current rule provides for case-by-case department decisions regarding the open burning of wood waste when it is moved from its place of origin. The proposed amendment to ARM 17.8.604(1)(a) would specify the circumstances under which moving wood waste from the location where it was generated and burning it may occur. The proposed amendment would require burners to comply with Best Available Control Technology when conducting such open burning.

The 2003 Legislature amended 75-2-211, MCA, to eliminate an automatic stay of the department's decision to issue a permit upon a permit appeal. Pursuant to that amendment, a permit decision is stayed only following a petition and a finding that the person requesting the stay is entitled to the relief demanded in the request for hearing or that continuation of the permit would cause the petitioner great or irreparable injury. Further, the petitioner is liable for costs and damages to the permit applicant if the board ultimately finds the permit was properly issued. The proposed amendments to ARM 17.8.612(10) and (11), 17.8.613(8) and (9), 17.8.614(8) and (9), and 17.8.615(6) and (7) reflect the Legislature's revision of the process for appealing air quality permits pursuant to 75-2-211, MCA.

The proposed amendment to ARM 17.8.610(2) corrects a grammatical error.

4. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or e-mailed to ejohnson@mt.gov, no later than 5:00 p.m., January 20, 2011. To be guaranteed consideration, mailed comments must be postmarked on or before that date.

5. Katherine Orr, attorney for the board, or another attorney for the Agency Legal Services Bureau, has been designated to preside over and conduct the hearing.

6. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding: air quality; hazardous waste/waste oil; asbestos control; water/wastewater treatment plant operator certification; solid waste; junk vehicles; infectious waste; public water supply; public sewage systems regulation; hard rock (metal) mine reclamation; major facility siting; opencut mine reclamation; strip mine reclamation; subdivisions; renewable energy grants/loans; wastewater treatment or safe drinking water revolving grants and loans; water quality; CECRA; underground/above ground storage tanks; MEPA; or general

procedural rules other than MEPA. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to Elois Johnson, Paralegal, Department of Environmental Quality, 1520 E. Sixth Ave., P.O. Box 200901, Helena, Montana 59620-0901, faxed to the office at (406) 444-4386, e-mailed to Elois Johnson at ejohnson@mt.gov, or may be made by completing a request form at any rules hearing held by the board.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

/s/ David Rusoff

DAVID RUSOFF
Rule Reviewer

BY: /s/ Joseph W. Russell

JOSEPH W. RUSSELL, M.P.H.,
Chairman

Certified to the Secretary of State, December 13, 2010.